IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.1994/07

Samay Singh & Anr. **Versus** State

DATE OF ORDER :: 06/12/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Pankaj Gupta, for petitioners
Mr. Arun Sharma, Public Prosecutor for State

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With the consent of parties, the matter is finally decided at this stage.

Instant petition has been filed by accused-petitioners assailing order dated 11th May, 2007 whereby application filed u/s.223 Cr.P.C. was rejected on the premise that trial, so far as present accused-petitioners is concerned, is at the final stage and the other co-accused, who were named in supplementary charge sheet, that is still at the stage of recording evidence of prosecution witnesses. On the said premise, their request to join their trial was rejected.

For the alleged incident of 24th September, 2003, FIR No.156/03 was registered and charge sheet was submitted against accused for offence u/ss.147, 148, 149, 323, 324, 307 & 302 IPC. Since other co-accused namely; Bhairu Singh, Ramraj & Kapoor were absconding and were arrested later on, charge sheet was filed on 2nd March,

2006 against the accused-petitioners and supplementary charge sheet was filed against other co-accused at a later stage after they were arrested, but by that time, trial qua present petitioners has commenced which is at the stage of final hearing at this juncture application was filed u/s.223 Cr.P.C.

Counsel for petitioners contends that accused-petitioners and other co-accused against whom supplementary charge sheet was filed – all are accused of the selfsame offence committed in the course of same transaction and merely because they could not be arrested by that time, supplementary charge sheet was filed at a later stage and as such u/s.223 Cr.P.C. if persons are charged for the same offence, they are ordinarily to be charged jointly and tried together otherwise there is full possibility that there may be a contradiction in statement and that may cause prejudice to either party. Learned trial Judge while passing order impugned observed that counsel has not brought to his notice the relevant provision under which application has been filed.

Under section 223 Cr.P.C. persons may be charged jointly and sub-sections (a) & (b) clearly postulate that persons who are accused of the same offence committed in the course of same transaction, are to be jointly charged and be

tried accordingly.

It has also been informed to this court that one of the accused namely; Samay Singh is in judicial custody. Since all are accused in the selfsame incident and facing trial arises from FIR No.156/03, in opinion of this court, it will be appropriate that both the cases be tried together. Accordingly, order dated 11th May, 2007 is set aside and learned trial Judge is directed to join both the cases i.e. 26/05 & 11/06 and try together, in accordance with law.

With the above observations, the misc. petition stands disposed of.

[AJAY RASTOGI],J.